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CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, ADOPTED BY UNANIMOUS AGREEMENT OF THE UNITED NATIONS GENERAL ASSEMBLY ON DECEMBER 10, 1984, AND SIGNED BY THE UNITED STATES ON APRIL 18, 1988

MAY 23, 1988.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 20, 1988.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, subject to certain reservations, understandings, and declarations, I transmit herewith the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by unanimous agreement of the United Nations General Assembly on December 10, 1984, and entered into force on June 26, 1987. The United States signed it on April 18, 1988. I also transmit, for the information of the Senate, the report of the Department of State on the Convention.

The United States participated actively and effectively in the negotiation of the Convention. It marks a significant step in the development during this century of international measures against torture and other inhuman treatment or punishment. Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today.

The core provisions of the Convention establish a regime for international cooperation in the criminal prosecution of torturers relying on so-called "universal jurisdiction." Each State Party is required either to prosecute torturers who are found in its territory or to extradite them to other countries for prosecution.

In view of the large number of States concerned, it was not possible to negotiate a treaty that was acceptable to the United States in all respects. Accordingly, certain reservations, understandings, and declarations have been drafted, which are discussed in the report of the Department of State. With the inclusion of these reservations, understandings, and declarations, I believe there are no constitutional or other legal obstacles to United States ratification. The recommended legislation necessary to implement the Convention will be submitted to the Congress separately.

Should the Senate give its advice and consent to ratification of the Convention, I intend at the time of deposit of United States ratification to make a declaration pursuant to Article 28 that the United States does not recognize the competence of the Committee against Torture under Article 20 to make confidential investigations of charges that torture is being systematically practiced in the United States. In addition, I intend not to make declarations, pursuant to Articles 21 and 22 of the Convention, recognizing the competence of the Committee against Torture to receive and consider communications from States and individuals alleging that the United States is violating the Convention. I believe that a final

United States decision as to whether to accept such competence of the Committee should be withheld until we have had an opportunity to assess the Committee's work. It would be possible for the United States in the future to accept the competence of the Committee pursuant to Articles 20, 21, and 22, should experience with the Committee prove satisfactory and should the United States consider this step desirable.

By giving its advice and consent to ratification of this Convention, the Senate of the United States will demonstrate unequivocally our desire to bring an end to the abhorrent practice of torture.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, May 10, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification (subject to specified reservations, understandings, and declarations) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by unanimous agreement of the United Nations General Assembly on December 10, 1984, and entered into force on June 26, 1987. The United States signed it on April 18, 1988.

The Convention marks a further significant step in the development during this century of international measures against torture and other inhuman treatment or punishment. The core provisions of the Convention establish a regime for international cooperation in the criminal prosecution of torturers relying on so-called "universal jurisdiction." Each State Party is required either to prosecute torturers who are found in its territory or to extradite them to other countries for prosecution. These provisions are modeled after four earlier multilateral conventions against terrorist acts: the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), the 1971 Montreal Convention for the Suppression of Unlawful Acts against Civil Aviation (Sabotage), the 1973 United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (Protection of Diplomats), and the 1979 International Convention against the Taking of Hostages (Hostages).

The United States contributed significantly to the development of the final Convention, especially in proposing that the Convention focus on torture rather than on other relatively less abhorrent practices and that the Convention conform more closely to comparable articles of the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages, aiming at a strong and effective Convention that would gain the widest possible adherence. In October 1984, a Joint Resolution of Congress expressed support for the involvement of the U.S. Government in the formulation of international standards and effective implementing mechanisms against torture, particularly through the draft U.N. Convention against Torture.

In view of the large number of States concerned, it was not possible to negotiate a treaty that was acceptable to the United States

in all respects. Accordingly, certain reservations, understandings, and declarations have been drafted to reflect the federal system of the United States, to clarify the definition of "torture," to ensure that the provisions relating to extradition and deportation are consistent with U.S. treaty obligations and U.S. law, and to reserve both to the compulsory jurisdiction of the International Court of Justice and to the competence of the Committee against Torture to initiate investigations of the United States. In addition, a declaration that the Convention is not self-executing is recommended. With such a declaration, the provisions of the Convention would not of themselves become effective as domestic law. The Department of Justice is of the view that, with the inclusion of the recommended reservations, understandings and declarations, no constitutional or other legal obstacles to United States ratification exist.

The Department of State recommends that you state your intent, should the Senate give its advice and consent to ratification of the Convention, not to make declarations, pursuant to Articles 21 and 22 of the Convention, recognizing the competence of the Committee against Torture to receive and consider communications from States and individuals alleging that the United States is violating the Convention. We believe that a final United States decision as to whether to accept such competence of the Committee should be withheld until a sufficient body of experience with the Committee has been developed and we are able to evaluate its work. It would be possible for the United States in the future to accept the competence of the Committee pursuant to Articles 20, 21, and 22, should experience with the Committee prove satisfactory.

The recommended legislation necessary to implement the Convention will be submitted to the Congress. The attached memorandum contains a summary and discussion of the provisions of the Convention, and the reservations, declarations, and understandings recommended to the Senate by the Departments of State, Justice and Defense.

The Department of State believes that the Convention against Torture is an important step toward ending the abhorrent practice of torture. The United States should ratify this Convention as soon as possible, with the reservations, understandings, and declarations indicated.

Respectfully Submitted,

GEORGE P. SHULTZ.

Summary and Analysis of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

GENERAL BACKGROUND

Among the antecedents of the Convention are the laws of war. The 1907 Hague Convention on the Laws and Customs of War on Land provides that prisoners of war "must be humanely treated" and that inhabitants of occupied territories generally may not be forced "to furnish information about the army of the other belligerent, or about its means of defense" or compelled "to swear allegiance to the hostile Power." (Annex, "Regulations Respecting the Laws and Customs of War on Land," Articles 4, 44, and 45.) The Third and Fourth Geneva Conventions of 1949, to which virtually all countries are parties, forbid "any form of torture or cruelty" towards prisoners of war and prohibit the use of "physical or moral coercion * * * against protected persons, in particular to obtain information from them or from third parties" as well as "taking any measure of such a character as to cause the physical suffering or extermination of protected persons * * *", including "brutality" as well as "murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person. * * *" (Third Convention, Article 87; Fourth Convention, Articles 31 and 32.)

With the development of more general human rights instruments, the prohibition of torture and inhuman treatment or punishment has been established as a standard for the protection of all persons, in time of peace as well as war. The first major United Nations document on human rights, the 1948 Universal Declaration of Human Rights, provides in Article 5:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Subsequently, the International Covenant on Civil and Political Rights was developed, which elaborated binding treaty obligations with respect to a broad range of civil and political rights. This treaty, which was opened for signature in 1966, is now in force for some 80 countries (but not for the United States, which has signed but not ratified it). It provides in Article 7:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 4 further provides that no derogation can be made from this provision, even in time of public emergency.

Prohibitions against torture are also contained in the regional human rights conventions. American Convention on Human Rights, Article 5(2) (OAS Treaty Series No. 36) (the United States has signed, but not ratified, this Convention); European Convention for the Protection of Human Rights and Fundamental Freedoms,

Article 3 (213 U.N.T.S. 221); African Charter on Human and Peoples' Rights, Article 5 (ASIL Int'l Legal Mat., Jan. 1981, p. 58).

A later instrument, which sets forth more detailed non-binding "guidelines" with respect to torture and other cruel, inhuman or degrading treatment or punishment, is the "Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," adopted by the United Nations General Assembly without a vote on December 9, 1975. A/Res/3452 (XXX). This declaration, which contains 12 articles defining torture and setting forth recommended measures for its prevention and punishment, was a point of departure for the drafting of the Convention against Torture.

The Convention is also modeled after four earlier multilateral conventions against terrorist acts, to each of which the United States is a party: the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking) (TIAS 7192; 22 UST 1641); the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage) (TIAS 7570; 24 UST 564); the 1973 United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (Protection of Diplomats) (TIAS 8532; 28 UST 1975); and the 1979 International Convention against the Taking of Hostages (Hostages) (U.N.G.A. Res. 34/46, December 17, 1979; Senate Ex. N, 96th Cong., 2d Sess (1980)). Each of these conventions establishes a regime for international cooperation in the criminal prosecution of persons committing the specific offense covered, relying particularly on so-called "universal jurisdiction"—the obligation of each State Party to establish criminal jurisdiction to prosecute offenders who are found in its territory—and on the obligation to extradite offenders or submit their cases for prosecution.

DECLARATION REGARDING THE NON-SELF-EXECUTING NATURE OF THE CONVENTION

Although the terms of the Convention, with the suggested reservations and understandings, are consonant with U.S. law, it is nevertheless preferable to leave any further implementation that may be desired to the domestic legislative and judicial process. The following declaration is therefore recommended, to clarify that the provisions of the Convention would not of themselves become effective as domestic law:

> "The United States declares that the provisions of Articles 1 through 16 of the Convention are not self-executing."

FEDERAL-STATE RESERVATION

Given the decentralized distribution of police and other governmental authority at federal, state and local levels, it is desirable to make the following federal-state reservation:

> "The United States shall implement the Convention to the extent that the Federal Government exercises legislative and judicial jurisdiction over the matters covered therein; to the extent that constituent units exercise jurisdiction over such matters, the Federal Government shall take appropriate meas-

ures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Convention."

This reservation would relate primarily to the obligations contained in Articles 10–14 and 16 of the Convention relating to training of law enforcement personnel, review of law enforcement procedures, investigation of allegations of torture, and complaints and civil suits alleging torture. It would not exclude state or local officials from the prohibitions on torture contained in the Convention.

ARTICLE 1

Article 1 defines "torture" for purposes of the Convention. The Convention seeks to define "torture" in a relatively limited fashion, corresponding to the common understanding of torture as an extreme practice which is universally condemned. "Torture" is thus to be distinguished from lesser forms of cruel, inhuman, or degrading treatment or punishment, which are to be deplored and prevented, but are not so universally and categorically condemned as to warrant the severe legal consequences that the Convention provides in the case of torture.

The Convention does not attempt to catalogue the various acts that constitute torture, nor was it thought possible to draw a precise line between torture and lesser forms of cruel, inhuman or degrading treatment or punishment. Rather, the Convention sets forth certain criteria which must be applied in determining whether a given act amounts to torture. For an act to constitute torture, it must be an extreme form of cruel and inhuman treatment, it must cause severe pain and suffering, and it must be intended to cause severe pain and suffering.

The requirement that torture be an extreme form of cruel and inhuman treatment is expressed in Article 16, which refers to "other acts of cruel, inhuman or degrading treatment or punishment *which do not amount to torture.* * * *" The negotiating history indicates that the underlined portion of this description was adopted in order to emphasize that torture is at the extreme end of cruel, inhuman and degrading treatment or punishment and that Article 1 should be construed with this in mind.

The extreme nature of torture is further emphasized in the requirement that torture cause *severe* pain and suffering. Article 1 recognizes that severe pain and suffering may be mental as well as physical. Mental pain and suffering is, however, a relatively more subjective phenomenon than physical suffering. Accordingly, in determining when mental pain and suffering is of such severity as to constitute torture, it is important to look to other, more objective criteria such as the degree of cruelty or inhumanity of the conduct causing the pain and suffering.

Further, the requirement of intent to cause severe pain and suffering is of particular importance in the case of alleged mental pain and suffering, as well as in cases where unexpectedly severe physical suffering is caused. Because specific intent is required, an act that results in unanticipated and unintended severity of pain and suffering is not torture for purposes of this Convention. The requirement of intent is emphasized in Article 1 by reference to illus-

trate motives for torture: obtaining information of a confession, intimidation and coercion, or any reason based on discrimination of any kind. The purposes given are not exhaustive, as is indicated by the phrasing "for such purposes as." Rather, they indicate the type of motivation that typically underlies torture, and emphasize the requirement for deliberate intention or malice.

In view of the above, such rough treatment as generally falls into the category of "police brutality," while deplorable, does not amount to "torture." The term "torture," in United States and international usage, is usually reserved for extreme, deliberate and unusually cruel practices, for example, sustained systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain. *See* European Court of Human Rights, *Judg. Court*, January 18, 1978, *Case of Ireland* v. *United Kingdom* Series A, No. 25, 2 E.H.R.R. 25, 80; European Commission of Human Rights, *Op. Com.*, 5 November 1969, *Greek Case*, § 11,YB XII p. 501.

The scope of the Convention is limited to torture "inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity." Thus, the Convention applies only to torture that occurs in the context of governmental authority, excluding torture that occurs as a wholly private act or, in terms more familiar in U.S. law, it applies to torture inflicted "under color of law." In addition, in our view, a public official may be deemed to "acquiesce" in a private act of torture only if the act is performed with his knowledge and the public official has a legal duty to intervene to prevent such activity.

The Convention excludes from the definition of torture such pain or suffering as arises only from or is inherent in or incidental to lawful sanctions. The term "sanctions" is not synonymous with the term "punishments." The word "punishments" may be construed more narrowly to comprehend only penalties for violation of a law, rule, or regulation, while the word "sanctions" includes as well penalties imposed in order to induce compliance. In the view of the United States, the term "sanctions" also embraces law enforcement actions other than judicially-imposed penalties. The Convention does not specify whether the "lawfulness" of sanctions should be determined by domestic or international law. During the negotiations, support was expressed for both alternatives. Although law enforcement actions authorized by U.S. law are not performed with the specific intent to cause excruciating and agonizing pain or suffering (and therefore do not meet the definition of torture contained in Article 1), we believe it is desirable to express the understanding that the "lawfulness" of such actions would be determined by U.S. law or by judicial interpretation of such law, in order to guard against illegitimate claims that such law enforcement actions constitute torture.

The following understandings are recommended to reflect the United States understanding of Article 1 as explained above. These understandings are intended to guard against the improper application of the Convention to legitimate U.S. law enforcement actions and thereby would protect U.S. law enforcement interests.

"The United States understands that, in order to constitute torture, an act must be a deliberate and calculated act of an

extremely cruel and inhuman nature, specifically intended to inflict excruciating and agonizing physical or mental pain or suffering."

"The United States understands that the definition of torture in Article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control."

"The United States understands that 'sanctions' includes not only judicially-imposed sanctions but also other enforcement actions authorized by United States law or by judicial interpretation of such law."

"The United States understands that the term 'acquiescence' requires that the public official, prior to the activity constituting torture, have knowledge of such activity and thereafter breach his legal responsibility to intervene to prevent such activity."

"The United States understands that noncompliance with applicable legal procedural standards does not *per se* constitute torture."

ARTICLE 2

Article 2 provides generally that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The term "territory under its jurisdiction" refers to all places that the State Party controls as a governmental authority, including ships and aircraft registered in that State.

In addition, Article 2 provides that no exceptional circumstances, such as war or public emergency, may be invoked as a justification for torture. The use of torture in wartime is already prohibited within the scope of the Geneva Conventions, to which the United States and virtually all other countries are Parties, and which in any event generally reflect customary international law. The exclusion of public emergency as an excuse for torture is necessary if the Convention is to have significant effect, as public emergencies are commonly invoked as a source of extraordinary powers or as a justification for limiting fundamental rights and freedoms.

Article 2 further provides that the plea of "superior orders" is not a defense to torture. The United States had proposed that the Convention expressly provide that superior orders nonetheless may be considered as a factor in mitigation of punishment, corresponding to the approach taken by the Nuremberg Tribunal. While this proposal was ultimately not adopted, it appears not to have been rejected. Rather, the matter has been left to the judgment of each State Party, and the United States could thus take superior orders into account in imposing criminal punishment for torture.

Under current U.S. military law, obedience to superior orders is a defense to charges under the Uniform Code of Military Justice, unless the accused knew the orders to be unlawful or a person of ordinary sense and understanding would have known the orders to be unlawful. Rule for Court Martial 916(d), *Manual for Courts-Martial* (Rev. 1984). As noted above, the United States understands torture to be limited to deliberate and calculated acts of an extremely cruel and inhuman nature, performed with a specific intent to

cause severe pain or suffering. A person of ordinary sense and understanding would know such acts to be criminal. Therefore, no change in U.S. military law would be required by Article 2 of the Convention.

Although no circumstances justify torture, legitimate acts of self-defense or defense of others do not constitute torture as defined by Article 1, since they are not performed with the specific intent to cause excruciating and agonizing pain or suffering. To clarify that Article 2 does not affect the availability of these common-law defenses, the following understanding is recommended:

> "The United States understands that paragraph 2 of Article 2 does not preclude the availability of relevant common law defenses, including but not limited to self-defense and defense of others."

ARTICLE 3

Article 3 provides that no State Party shall expel, return, or extradite a person to another State where substantial grounds exist for believing that he would be in danger of being subjected to torture.

Under current U.S. law, an individual may not normally be expelled or returned where his "life or freedom would be threatened * * * on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1253(h)(1). The U.S. Supreme Court has interpreted this provision to mean that a person entitled to its protections may not be deported to a country where it is more likely than not that he would be persecuted. *INS* v. *Stevic*, 467 U.S. 407 (1984). To clarify that Article 3 is not intended to alter this standard of proof, the following understanding is recommended:

> "The United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in Article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.' "

Article 3 would extend the prohibition on deportation under existing U.S. law to cases of torture not involving persecution on one of the listed impermissible grounds. This prohibition applies to expulsion or return of persons in the United States to a particular State, and does not grant a right to seek entry or to avoid expulsion to other States.

Article 3 would also add a further treaty basis for denying extradiction as between States both of which are Parties to the Convention against Torture. It was recognized, however, in the drafting of Article 3, that the obligation expressed might conflict in a given case with the obligation to extradite under a bilateral extradition treaty with a State which is not party to the Convention. Accordingly, it was acknowledged that some States Parties might wish to make a reservation stating that they do not consider themselves bound by Article 3 insofar as it may not be compatible with their obligations towards States not party to the Convention under extradition treaties concluded before the date of the signature of the Convention.

Generally, the extradition treaties of the United States do not provide a basis for denying extradition on the grounds that an individual would be in danger of being subjected to "torture", as such, in the State to which he is extradited. It is likely that not all of the States with which we have extradition treaties will become parties to the Torture Convention. Thus, a conflict could conceivably arise between the obligation of the United States to extradite to a particular State under a bilateral extradition treaty, and our obligation under Article 3 of the Torture Convention not to extradite to *any* State where an individual would be in danger of being subjected to torture. The following reservation is recommended:

> "The United States does not consider itself bound by Article 3 insofar as it conflicts with the obligations of the United States toward States not party to the Convention under bilateral extradition treaties with such States."

This reservation would eliminate the possibility of conflicting treaty obligations. This is not to say, however, that the United States would ever surrender a fugitive to a State where he would actually be in danger of being subjected to torture. Pursuant to his discretion under domestic law, and existing treaty bases for denying extradition, the Secretary of State would be able to satisfy himself on this issue before surrender. The reservation will enable the United States to avoid having to process claims under the Torture Convention when such potentially conflicting obligations are present. Instead, the Executive Branch will be free to act with relative speed and informality.

Article 3 further specifies that, in determining whether grounds exist to believe that an individual would be in danger of being subjected to torture, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant, or mass violations of human rights. The words "where applicable" indicate that the competent authorities must decide in each case whether and to what extent the existence of "human rights violations" in a given country is in fact a relevant factor in a particular case. For example, the gross and flagrant denial of freedom of the press, without more, would not generally raise a presumption of torture.

The reference in Article 3 to "competent authorities" appropriately refers in the United States to the competent administrative authorities who make the determination whether to extradite, expel, or return. The following declaration is recommended to specify the competent authorities:

> "The United States declares that the phrase, 'competent authorities,' as used in Article 3 of the Convention, refers to the Secretary of State in extradition cases and to the Attorney General in deportation cases."

Because the Convention is not self-executing, the determinations of these authorities will not be subject to judicial review in domestic courts.

ARTICLE 4

Article 4 provides that each State Party shall ensure that all acts of torture, as well as attempts to commit torture and complicity or participation in torture, are criminal offenses, punishable by appropriate penalties taking into account the grave nature of such offenses. This article, as well as the following Articles 5–7, are closely modeled on the provisions of the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages.

As discussed in greater detail in connection with Article 5, following, U.S. jurisdiction under existing law appears not to extend to acts of torture committed abroad. Acts of torture committed in the United States, however, as well as acts in the United States constituting an attempt or conspiracy to torture, would appear to violate criminal statutes under existing state or federal law. When such acts are subject to state jurisdiction, the offense would presumably be a common crime such as assault or murder. In particular cases, the nature of the activity or persons involved could give rise to a federal offense as well, such as interstate kidnapping or hostage-taking. *See, e.g.,* 18 U.S.C. § 112, § 114, § 115, § 878, § 1201 and § 1203.

Where the acts are subject to federal jurisdiction, similar common crimes are defined under federal criminal law, for example, assault, maiming, murder, manslaughter, attempt to commit murder or manslaughter, and rape. 18 U.S. § 113, § 114, § 1111, § 1112, § 1113, and § 2031. Conspiracy to commit the above crimes and being an accessory after the fact are also offenses. 18 U.S.C. § 3, § 371 and § 1117. Moreover, where acts are committed within the special maritime and territorial jurisdiction located within a state, federal law incorporates criminal offenses as defined by state law. 18 U.S.C. § 13.

In addition to such common criminal offenses, federal law defines two "constitutional crimes" that are particularly relevant. Under 18 U.S.C. § 241, conspiracy to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States is a crime punishable by a $10,000 fine, up to ten years imprisonment, or both. Under 18 U.S.C. § 242, whoever willfully subjects any U.S. inhabitant to deprivation of such rights, privileges, or immunities under color of law, may be fined up to $1,000, or imprisoned for up to a year, or both. Under both statutes, the offender may be sentenced to life imprisonment where death results. In particular cases, certain other civil rights statutes might also be relevant. *See, e.g.,* 18 U.S.C. § 245 or § 594. Moreover, under 18 U.S.C. § 3571, for any offense occurring on or after December 11, 1987, an individual convicted for a felony or for a misdemeanor resulting in the loss of human life is subject to a possible fine of up to $250,000. If convicted for any other Class A misdemeanor, the individual is subject to a possible fine of up to $100,000.

In general, protection against torture is afforded by the Eighth, Fifth and Fourteenth Amendments to the U.S. Constitution. The Eighth Amendment prohibition of cruel and unusual punishment is, of the three, the most limited in scope, as this amendment has consistently been interpreted as protecting only "those convicted of

crimes." *Ingraham* v. *Wright,* 430 U.S. 651, 664 (1977). The Eighth Amendment does, however, afford protection against torture and ill-treatment of persons in prison and similar situations of criminal punishment.

In other situations, the Fifth and Fourteenth Amendments provide protection against torture. Such protection is afforded most generally by substantive due process protection of the right to personal security. *See Youngberg* v. *Romeo,* 457 U.S. 307, 315–6 (1982). The prohibition against self-incrimination also provides more specific protection against torture being used to coerce a confession. *Williams* v. *United States,* 341 U.S. 97 (1951). *Duncan* v. *Nelson,* 466 F.2d 939 (7th Cir. 1972), *cert. den.,* 409 U.S. 894 (1972).

Torture could, in particular circumstances, violate other constitutional rights as well, for example, the Fourth Amendment guarantees against unreasonable searches and seizures, or Sixth Amendment rights concerning trial.

In view of the above, it appears that the conduct of "torture" within the United States or U.S. jurisdiction will violate some federal or state criminal law. Existing law is therefore sufficient to implement Article 4, except to reach torture occurring outside U.S. jurisdiction, as discussed below.

ARTICLE 5

Article 5 provides that each State Party shall take necessary measures to establish its jurisdiction over torture offenses, as referred to in Article 4, in three circumstances: (1) when the offense is committed in any territory under its jurisdiction, or on board a ship or aircraft registered in that State (Article 5(1)(a)), (2) when the alleged offender is a national of that State (Article 5(1)(b)), and (3) when the alleged offender is present in any territory under its jurisdiction and is not extradited as provided in Article 8 (Article 5(2)). In addition, a State may, if it "considers it appropriate," establish its jurisdiction over cases in which the victim is one of its nationals (Article 5(1)(c)).

A major concern in drafting Article 5, and indeed, in drafting the Convention as a whole, was whether the Convention should provide for possible prosecution by any State in which the alleged offender is found—so-called "universal jurisdiction." The United States strongly supported the provision for universal jurisdiction, on the grounds that torture, like hijacking, sabotage, hostage-taking, and attacks on internationally protected persons, is an offense of special international concern, and should have similarly broad, universal recognition as a crime against humanity, with appropriate jurisdictional consequences. Provision for "universal jurisdiction" was also deemed important in view of the fact that the government of the country where official torture actualiy occurs may seldom be relied upon to take action. Of course, if a foreign government were to use the universal jurisdiction provisions contained in Articles 5–7 to bring an unjustified prosecution against a U.S. citizen, the U.S. Government would strongly resist such an illegitimate action.

As discussed above, existing federal and state law appears sufficient to establish jurisdiction when the offense has allegedly been committed in any territory under U.S. jurisdiction or on board a

ship or aircraft registered in the United States. *See* 18 U.S.C. § 7; 49 U.S.C. App. §§ 1301(38), 1472. Implementing legislation is therefore needed only to establish Article 5(1)(b) jurisdiction over offenses committed by U.S. nationals outside the United States, and to establish Article 5(2) jurisdiction over foreign offenders committing torture abroad who are later found in territory under U.S. jurisdiction. Recommended legislation will be transmitted to Congress by the Department of Justice. Similar legislation has already been enacted to implement comparable provisions of the Conventions on Hijacking, Sabotage, Hostages, and Protection of Diplomats. 18 U.S.C. § 32, § 112(e), § 878(d), § 1116(c), § 1201(e), and § 1203; 49 U.S.C. App. § 1301(38)(d) and § 1472(n).

The following declaration is recommended:

> "The United States will not deposit the instrument of ratification until after the implementing legislation of the Convention has been enacted."

ARTICLE 6

Article 6 describes the procedures to be followed when an alleged offender is found in the territory of a State Party. First, where the State is satisfied that the circumstances so warrant, based on an examination of the available information, the State must take the alleged offender into custody or take other legal measures to secure his presence, as provided by its law, until such time as is necessary to enable either criminal proceedings or extradition to be instituted.

When the individual held in custody is not a national of the holding State, he must be assisted in communicating with a representative of the State of which he is a national. This step reflects the customary international procedure when a non-national is held in custody. (1963 Vienna Convention on Consular Relations, Article 36(1)(b), TIAS 6820, 21 UST 77.)

The State that takes the individual into custody must also notify those States that could also have jurisdiction over the offense under Article 5 of this fact and of the circumstances that warrant his detention. The State must make a "preliminary inquiry into the facts" and inform other interested States of its findings and whether it intends to exercise jurisdiction.

This provision is closely modeled after comparable provisions of the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages, with certain drafting clarifications. In paragraph 1, the phrase "after an examination of information available to it" was added in order to make clear that the decision whether to take an individual into custody entails an examination of available information even though a so-called "preliminary" investigation will be made subsequently. The word "legal" was added to the phrase "custody or other measures" ("custody or other *legal* measures") in order to guard against an overly broad interpretation of the word "measures."

The implementation of this provision relies on existing law and procedure for investigating alleged crimes and no further implementing legislation is required.

ARTICLE 7

Article 7 provisions that if a State does not extradite an alleged offender found within its jurisdiction, it shall "submit the case to its competent authorities for the purpose of prosecution." A comparable provision is found in the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages.

Substantial debate occurred on whether to include this strict so-called "extradite or prosecute" rule in the Convention. A number of State proposed a weaker formulation—that a State would be obligated to submit a case for prosecution only where a request for extradition is received and refused. The United States and others were concerned, however, that a weaker provision would create "a loophole in the Convention, thereby creating potential safe-havens for torturers." After lengthy consideration, the stronger provision was adopted in 1984.

In case where torture is alleged and a State does not extradite the alleged torturer, Article 7 does not require prosecution. Rather, it requires submission of the case to competent authorities "for the purpose of prosecution." The decision whether to prosecute entails a judgment whether a sufficient legal and factual basis exists for such an action. (WG 82, para. 27.) Paragraph 2 of Article 7 provides accordingly that "these authorities shall take their decision [regarding prosecution] in the same manner as in the case of any ordinary offense of a serious nature under the law of that State." Paragraph 2 implicitly recognizes that the law of each State should be used to determine "the standards of evidence required for prosecution and conviction" and provides that no lesser standard shall be applied when jurisdiction is asserted on the basis of the presence of the offender than is applied when the alleged offender is a national or when the alleged offense occurred within the acting State's territory.

Although Article 5 provides for universal jurisdiction over acts of torture, the United States is not generally the most appropriate forum for hearing cases involving acts of torture committed in foreign countries by one alien against another. Instead, the State where the torture occurred has a greater interest than does the United States in prosecution. The following declaration is therefore recommended:

> "The United States declares that it will submit a case involving alleged torture committed by an alien outside the United States to its competent authorities for the purpose of prosecution, pursuant to Article 7(1) of the Convention, only if extradition of the offender to the State where the offense was committed is not an adequate alternative."

The application of immunities from criminal prosecution, such as those immunities enjoyed by diplomats under the Vienna Convention on Diplomatic Relations, was not explicitly discussed during the negotiation of the Convention. Article 7(2), however, implicitly recognizes that such immunities are not affected by the Convention, by stating that the authorities "shall take their decision in the same manner as in the case of any ordinary offense of a serious nature." (The question of immunities also arises under Article 14,

which obligates States Parties to provide an enforceable right to fair and adequate compensation.)

Finally, Article 7(3) provides generally that the alleged offender "shall be guaranteed fair treatment at all stages of the proceedings." This paragraph stems from a U.S. proposal and is intended to safeguard the rights of the accused.

ARTICLE 8

Article 8 addresses the legal framework for extradition of alleged offenders. This provision, which is also modeled on corresponding provisions in the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages, was initially proposed by the United States. Paragraph 1 provides that the offenses described in Article 4 will be "deemed to be included as extraditable offenses" in pre-existing extradition treaties between States Parties to the Convention and will be included in future extradition treaties which are concluded. The terms of such bilateral extradition treaties, and not the Convention against Torture, will determine whether or not the United States has an obligation to extradite in a given case.

Paragraphs 2 and 3 concern extradition requests when no bilateral extradition treaty exists between the requesting and requested State. If, under the law of the requested State, a treaty is required for extradition, that State may *at its option* consider the Convention as the treaty that provides the legal basis for extradition. If, on the other hand, the law of the requested State permits extradition without a treaty, it must extradite subject to the conditions established by its law.

Under U.S. law, a treaty is required for extradition from the United States. However, relevant U.S. Supreme Court decisions indicate that Article 8 alone would not provide a sufficient treaty basis for extradition.

ARTICLE 9

This article, also modeled on the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages, provides that States "shall afford one another the greatest measure of assistance in connection with criminal proceedings" under the Convention, including the supply of all evidence at their disposal necessary for the proceedings.

A U.S. proposal that Article 9(1) further provide that "the law of the State requested shall apply in all cases" was not adopted, but it appeared to be generally recognized that the law of the requested State would apply to determine the scope of the assistance that can be afforded.

The second paragraph of Article 9 differs from the corresponding provision of the Conventions on Hijacking, Sabotage, Protection of Diplomats, and Hostages. These Conventions, and the initial draft of the Convention against Torture, provide that the obligation contained in paragraph 1 "shall not affect" mutual judicial assistance obligations contained in other treaties. This was revised, however, in the final text of the Torture Convention to provide that the obligation contained in paragraph 1 shall be carried out "in conformity with" any other treaties on mutual judicial assistance. This revi-

sion was intended to make it clear that paragraph 2 should not be interpreted to weaken the obligation established by paragraph 1.

In the event that no treaty on mutual judicial assistance is in effect between the respective States, Article 9(2) is irrelevant and assistance would be afforded as provided in Article 9(1) of the Convention.

ARTICLES 10 AND 11

Article 10 provides that States Parties shall ensure that education and information regarding the prohibition against torture are fully included in the training of persons who may be involved in the custody, interrogation, or treatment of persons arrested, detained, or imprisoned. Article 11 further provides that each State shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for custody and treatment with a view toward preventing cases of torture.

In keeping with the federal-state reservation discussed above, the United States would implement these obligations with respect to law enforcement forces acting under its authority or control; with respect to law enforcement forces acting under the authority or control of the states or municipalities, the Federal Government would take appropriate measures to the end that the competent authorities of the states may take appropriate measures for the fulfillment of Articles 10 and 11.

ARTICLES 12 AND 13

Article 12 provides that the competent authorities of a State will proceed to "a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." Such an investigation is to be made on the initiative of the State authorities and not only when a formal complaint is made.

Article 13 provides that an individual should have the right to bring a complaint of torture and to have his case promptly and impartially examined by the competent authorities. In such event, the State must take steps where necessary to ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of bringing the complaint or giving evidence with respect to it.

ARTICLE 14

Article 14 provides that a victim of torture shall have a legal right to redress and an enforceable right to fair and adequate compensation. Where the victim dies as a result of torture, his dependents shall be entitled to compensation.

The negotiating history of the Convention indicates that Article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in its territory, not for acts of torture occurring abroad. Article 14 was in fact adopted with express reference to "the victim of an act of torture *committed in any territory under its jurisdiction.*" The italicized wording appears to have been deleted by mistake. This interpretation is confirmed by the absence of any discussion of the issue, since the

creation of a "universal" right to sue would have been as controversial as was the creation of "universal jurisdiction," if not more so.

The following understanding is recommended:

> "It is the understanding of the United States that Article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party."

A question could be raised whether Article 14 is intended to require a victim compensation scheme or whether it is sufficient that victims have a right to bring a civil suit against the alleged torturer. Either approach would seem to provide "an enforceable right to fair and adequate compensation" as required by the text of Article 14. The negotiating history confirms this view, in that no requirement of a victim compensation scheme was discussed, nor does such an interpretation appear to have been suggested, notwithstanding that many if not more countries, including the United States, do not have such schemes.

Existing U.S. law already establishes private rights of suit sufficient to implement Article 14. Such a suit could take the form of a common law tort action, a civil action for violation of civil rights under 42 U.S.C. §§ 1981–1992, or a suit for constitutional tort. *See, e.g., Bivens* v. *Six Unknown Named Agents*, 403 U.S. 388 (1971), and *Carlson* v. *Green*, 446 U.S. 14 (1980). In the hypothetical case of an authorized federal action in which the individual defendants could claim immunity from civil suit, an action could be brought against the United States. 28 U.S.C. § 1346(b) and § 2674. Although some U.S. courts have held that current U.S. law provides a private right of action for acts of torture occurring outside the United States, *see, e.g., Filartiga* v. *Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), as discussed above this result is not compelled by the Convention.

There is no indication in the legislative history that Article 14 was intended to affect the immunities from civil jurisdiction and liability that States and certain individuals enjoy.

ARTICLE 15

This article establishes an exclusionary rule of evidence: no statement that is established to have been made as a result of torture shall be used as evidence in any proceeding, except against an alleged torturer as evidence of torture. This rule of exclusion, by the plain terms of Article 15, applies only to the statement itself and not to so-called "fruits" of the statement. The latter doctrine is a feature of U.S. constitutional law but is not applied in international practice.

Statements made under torture generally would be subject to exclusion under U.S. rules of evidence. Such statements could not be used against the person making them, since the statements would be involuntary. The U.S. rules against admissibility of illegally obtained evidence and involuntary confessions are stricter than is provided for under the Convention. Where a statement made under torture is invoked against a third party, a question could arise as to whether that party had standing to raise the illegality of the means of obtaining such evidence as a ground for exclusion. As a

practical matter, however, the hearsay rule would generally operate to exclude such statements, where sought to be introduced against third parties.

ARTICLE 16

Article 16 addresses other forms of cruel, inhuman, or degrading treatment or punishment not amounting to torture (hereafter "CIDT"). Initially, the Convention provided much the same obligations with respect to torture and CIDT. The United States as well as a number of other countries expressed concern with this approach, noting that the attempt to establish the same obligations for torture as for lesser forms of ill-treatment would result either in defining obligations concerning CIDT that were overly stringent or in defining obligations concerning torture that were overly weak. This view prevailed and Article 16 thus creates a separate and more limited obligation with respect to CIDT not amounting to torture.

Article 16 provides that States undertake to prevent CIDT not amounting to torture in territories within their jurisdiction. Article 16 thus embodies an undertaking to take measures to prevent CIDT rather than a prohibition of CIDT. The particular steps that must be take in order to prevent CIDT are those specified in Articles 10–13: appropriate training of law enforcement and other appropriate personnel, review of interrogation and detention rules and practices, investigation by State authorities, and making available the right to bring a complaint for investigation.

As provided in paragraph 2, the limited scope of Article 16 is without prejudice to more extensive rights and obligations that may be established by any other applicable national or international law.

Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. *See, e.g.*, European Commission of Human Rights, *Dec. on Adm.*, Dec. 15, 1977, *Case of X* v. *Federal Republic of Germany* (No. 6694/74), 11 Dec. & Rep. 16 (refusal of authorities to give formal recognition to an individual's change of sex might constitute "degrading" treatment). To make clear that the United States construes the phrase to be coextensive with its constitutional guarantees against cruel, unusual, and inhumane treatment, the following understanding is recommended:

> "The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane

treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."

Because Article 16 requires States Parties to apply the obligations in Articles 10–13 to cases of cruel, inhumane or degrading treatment or punishment, the questions regarding implementation noted in connection with these Articles apply also with respect to Article 16. Like Articles 10–13, Article 16 could be implemented by an appropriate combination of federal and state action and the federal-state reservation proposed above would be relevant.

ARTICLES 17–24 AND 28

These articles establish an international Committee against Torture that functions as an oversight and enforcement body with respect to obligations of States Parties under the Convention. The creation of such a treaty body is a standard procedure; similar bodies were established, for example, by the International Convenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination (both of these Conventions have been signed but not ratified by the United States).

The Committee against Torture consists of ten "experts of high moral standing and recognized competence in the field of human rights" serving in their individual capacity and not as representatives of governments. (Article 17.) These experts are elected for four-year terms by a secret ballot of States Parties from among persons who are nominated by States Parties. The appointment of so-called "temporary alternates," who may tend to be government officials rather than independent experts, is not permitted. The States Parties to the Convention are responsible for the expenses of the Committee, which are expected to be approximately $750,000 annually. (Article 18.) The U.S. contribution would be calculated proportionately on the basis of the scale of assessments for apportioning the U.N. budget, with a ceiling of 25 percent. On this basis, the U.S. contribution would be approximately $187,000 per year.

The Committee is empowered to review reports submitted by States Parties on the measures they have taken to give effect to their undertakings under the Convention and to make "general comments" on these reports. (Article 19.)

The Convention provides three additional powers of the Committee which it can exercise only with respect to States that choose to grant it these powers. First, the Committee may conduct investigations on its own initiative when it "receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced." (Articles 20.) A State may, however, make a declaration upon signature, ratification or accession that it does not recognize such competence. (Article 28.) Second, a State may make a declaration recognizing the competence of the Committee to consider claims made by another State Party that the former State is not fulfilling its obligations under the Convention. (Article 21.) Finally, a State may make a declaration recognizing the competence of the Committee to consider communications made by or on behalf of individuals claiming to be victims of a violation of the Convention by that State. (Article 22.)

The procedures to be followed in each of these cases are spelled out in the respective article of the Convention. Complaints by States and communications by or on behalf of individuals are not admissible until all available domestic remedies have been exhausted, except where the application of such remedies is unreasonably prolonged or unlikely to bring effective relief to the individual alleged to be the victim. A State that is subject to a complaint, communication, or investigation is given an opportunity to explain and refute allegations made against it. Communications and complaints are considered in closed, confidential sessions.

When the Committee has considered a State complaint or an individual communication, its conclusions are presented to the parties directly concerned. When the Committee investigates a situation of alleged systematic practice of torture, its findings are transmitted to the State Party concerned along with "any comments or suggestions which seem appropriate in view of the situation."

In carrying out these functions, the Committee functions as an investigatory body and not as a court; it is not empowered to issue an award against or an order to a State Party. Where a State brings a claim against another State under Article 21, however, the Committee may set up an *ad hoc* conciliation commission which would attempt to seek a "friendly solution."

The members of the Committee and of any conciliation commission that may be appointed are entitled to the facilities, privileges, and immunities of experts on mission for the United Nations as established by the Convention on the Privileges and Immunities of the United Nations. (Article 23.) The United States is a party to this Convention.

We recommend that, before accepting the competence of the Committee against Torture under Article 20 to initiate confidential investigations of the United States, we should have an opportunity to evaluate the Committee's work. Accordingly, we recommend that the United States make the following reservation:

> "Pursuant to article 28(1), the United States declares that it does not recognize the competence of the Committee against Torture under Article 20."

It would be possible in the future to accept the competence of the Committee should experience with the Committee prove satisfactory and should this step appear desirable.

For the same reasons, we recommend that the United States not at this time make declarations upon deposit of the United States instrument of ratification, pursuant to Articles 21 and 22 of the Convention, recognizing the competence of the Committee against Torture to receive and consider communications from States and individuals alleging that the United States is violating the Convention. As with the Committee's Article 20 powers, we should delay a final U.S. decision concerning the Committee's powers under Articles 21 and 22 until a sufficient body of experience with the Committee has been developed and we are able to evaluate its work.

ARTICLES 25–33

The final clauses of the Convention are relatively standard. The Convention is open for signature by all States, subject to ratifica-

tion, or for accession by any State. (Articles 25 and 26.) Pursuant to Article 27, the Convention entered into force on June 26, 1987, thirty days after the twentieth State had become a Party. Any State may terminate its adherence to the treaty, effective one year after notice is given, but such termination shall not affect obligations regarding acts or omissions prior to the effective date of termination. (Article 31.)

The Convention can also be amended by a majority of States Parties present and voting at a conference called for that purpose. Such an amendment shall not be effective, however, until two-thirds of all States Parties have accepted it, and shall be binding only on those States that specifically accept it. (Article 29.)

The Convention also provides in Article 30(1) that disputes between two or more States Parties concerning the interpretation or application of this Convention may be submitted to *ad hoc* arbitration, or, failing agreement on the organization of such arbitration, to the International Court of Justice. Article 30(2) provides that a State may make a declaration excluding this dispute-resolution obligation at the time of signature, ratification, or accession. In October 1985, the United States withdrew its declaration under Article 36 of the Statute of the International Court of Justice accepting the compulsory jurisdiction of the Court. Consistent with that decision, the following reservation is recommended:

> "Pursuant to Article 30(2) of the Convention, the United States declares that it does not consider itself bound by Article 30(1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case."

This reservation would allow the United States to agree to an adjudication by a chamber of the Court in a particular case, if that were deemed desirable.

The UN Secretary-General is the depository for the Convention. (Articles 26 and 32.) The respective texts in all UN official languages are equally authentic. (Article 33.)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent such acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return (*"refouler"*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(*a*) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(*b*) When the alleged offender is a national of that State;

(*c*) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or

take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition processings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between State Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extraditon conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect to such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in

the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for

as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of

votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(*a*) Six members shall constitute a quorum;

(*b*) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures

they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committtee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(*b*) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(*d*) The Committee shall hold closed meetings when examining communications under this article;

(*e*) Subject to the provisions of subparagraph (*c*), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an *ad hoc* conciliation commission;

(*f*) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (*b*), to supply any relevant information;

(*g*) The States Parties concerned, referred to in subparagraph (*b*), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(*h*) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (*b*), submit a report:

(i) If a solution within the terms of subparagraph (*e*) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (*e*) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(*a*) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(*b*) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 21, paragraph 1(*e*), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the

United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider

itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(*a*) Signatures, ratifications and accessions under articles 25 and 26;

(*b*) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(*c*) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

STATEMENT OF THE UNITED STATES OF AMERICA UPON SIGNATURE OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Government of the United States of America reserves the right to communicate, upon ratification, such reservations, interpretive understandings, or declarations as are deemed necessary.

JOHN C. WHITEHEAD.

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